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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/233,443 01/20/99 VAN LINGERICH

B BVL-105

EXAMINER

HM12/0705

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ART UNIT

PAPER NUMBER

1617

DATE MAILED:

07/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/233443

Applicant(s)

VAN LUNBERICA

Examiner

WEBMAN

Group Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 3/27/01
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-67 56, 58, 60 is/are pending in the application.
- Of the above claim(s) 1-20, 23, 26, 27, 30-46, 53, 61-65 is/are withdrawn from consideration.
- ☐ Claim(s) 26 is/are allowed.
- ☒ Claim(s) 21, 22, 28, 29, 47-52, 54-60, 66, 67 is/are rejected.
- ☐ Claim(s) non-elected is/are objected to.
- ☐ Claim(s) non-elected are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 10, 16, 17
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1617

Applicant's election with traverse of claims 21-27, 29, 47-60, 66, 67, a microorganism neutraceutical encapsulant and durum wheat as a plasticizable matrix in Paper No. 15 is acknowledged. The traversal is on the ground(s) ^(FINAL) that the product contains the plasticizer of the process and the intermediate product/~~product~~ claims recite no limitations outside of the final product claims, that is, they are not mutually exclusive. This is not found persuasive because the plasticizer, namely water, is removed by drying and, therefore, is not present in the product and ^(INTERMEDIATE) the intermediate product loses its particulate identity in the final product such as a liquid soup or gel-like pudding. As to claim 29, "food topping" in the preamble is not a patentable limitation, but merely an intended use. Applicant's comments regarding the elections of species are mere opinion.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21, 22, 24, 25, ^{NON-ENTITLED} (28), 29, 47-52, 54-60, 66, 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Lengerich.

Van Lengerich (WO 98/18610) teaches particles comprising an encapsulated active (Abstract), Microorganisms (page 14, line 23) and durum wheat (page 12 line 3) are specified. As

Art Unit: 1617

to the claimed process, it is not considered a patentable limitation in composition claims during prosecution before the PTO.

Claims 21-22, 24, 25, 47-60, 66, 67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.


Claim 25 contains numerous grammatical and spelling errors. For example, on page 37 line 3, a comma is missing after "acepromazine". On page 40, line 3 "aminosalicylic" is misspelled. In addition, phrases specifying metal salts, such as "barium salts" on page 38 line 10 are vague. Abbreviations such as "ISMN" on page 43 line 4 are vague. There are compounds which are recited twice, such as nifedipine on page 41 line 6 and page 43 line 3.

In claims 21, 23, 66, 67 "substantially" is vague; what percent?

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is (703) 308-4432. The examiner can normally be reached on M-F from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, M. Moezie, can be reached on (703) 308-0570. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.


EDWARD J. WEBMAN
PATENT EXAMINER
GROUP 1800

Application/Control Number: 09/233,443

Page 4

Art Unit: 1617

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Webman:mv

June 5, 2001



TERESA J. WEBMAN
PATENT EXAMINER
GROUP 1500